STATE OF MICHIGAN

COURT OF APPEALS

RAMONA DROZDOWSKI and DAVID DROZDOWSKI, as Next Friends of ANDREW DROZDOWSKI, a Minor,

Plaintiffs-Appellants,

v

CITY OF SOUTH LYON,

Defendant,

and

SOUTH LYON COMMUNITY SCHOOLS, a/k/a OAKLAND SCHOOLS, DEANNA TRINOSKY, MIKE SPENCER, and AIDE BONNIE,

Defendants-Appellees.

UNPUBLISHED
May 18, 2006

No. 266750
Oakland Circuit Court
LC No. 2004-060407-NI

Before: Schuette, P.J. and Bandstra and Cooper, JJ.

COOPER, J. (*concurring in part and dissenting in part*).

I concur with the majority in result, but write separately because I dissent as to the analysis of proximate cause. The majority finds that because there is no evidence that defendants "directly caused Andrew's fall," defendants' conduct cannot be the proximate cause of plaintiff's injuries. I disagree because a proximate cause analysis necessarily involves at least a minimal inquiry into intervening and superseding causation:

> Accordingly, proper analysis of a proximate cause question frequently will turn on accurately determining whether the facts in a case present a situation involving direct causality or intervening causality. The fact that more than one cause operates to produce an injury is not in itself determinative. Two causes frequently operate concurrently so that both constitute a direct proximate cause of the resulting harm.

McMillian v Vliet, 422 Mich 570, 577; 374 NW2d 679 (1985).

Here, it seems evident that while the individual conduct of each defendant might have been negligent, it did not rise to the level of gross negligence. Where governmental immunity applies, negligence that is a proximate cause of an injury is insufficient to create liability. It bears repeating, however, that the proximate cause inquiry cannot be completed without consideration of intervening and superseding causation.

/s/ Jessica R. Cooper